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Paper No.

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ROSATI, P.C.
650 PAGE MILL RD.
PALO ALTO, CA 94304

MAILED

JUL 26 2010

OFFICE OF PETITIONS

In re Application of :
Buechler : DECISION ON APPLICATION
Application No. 10/792,258 : FOR
Filed: March 2, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No.
36671-716303 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)," filed November 18, 2008. Patentee requests that the patent term adjustment of five hundred and seventy two (572) days be adjusted to a determination of one thousand one hundred seventy-nine (1179) days.

The request for reconsideration of patent term adjustment is GRANTED-in-Part. Patentee is entitled to a PTA adjustment of 1180 days. The Office will *sua sponte* issue certificate of correction reflecting this decision. The Office will adjust the PTA calculation to reflect this decision.

On November 4, 2008, the above-identified application matured into US Patent No. 7,445,941 with a patent term adjustment of 572 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 CFR 1.705(d).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e), paid on November 18, 2008. No additional fees are required.

Patentees request recalculation of the patent term adjustment based on the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88

U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentee asserts that in view of the decision in Wyeth, they are entitled to a total patent term adjustment of 1179 days.

Applicants assert the following:

"A" delays= 674

"B" delays =613

"C" delays =0

Overlap between A and B is 5 days

Office delay is 103 days.

PTA =1179

The Office finds the following:

"A" delays= 674

"B" delays =613

"C" delays =0

Overlap between A and B is 5 days

Office delay is 102 days.

PTA=1180.

The Office finds that patentee erred in assessing one additional day of delay in the response filed by patentee on March 9, 2008. The delay begin on Jaunty 10, 2008, the day after the 3 month anniversary date and ended on March 9, 2008, a 60-day delay as found in the PTA calculation.

Since the Office is *sua sponte* issuing a certificate of correction on this decision, the patentee is provided an opportunity to be heard. Accordingly, patentee is given one month or thirty (30) days whichever is longer to respond to the determined certificate of correction. Nothing in this decision shall provide patentee an alternative time period to commence a civil action under 35 USC 154.

Telephone inquiries specific to this decision should be directed to Maria Nuzzolillo, Legal Advisor, at (571) 272-8150, or the undersigned at 571-272-7757.

/Kery A. Fries/

Kery A. Fries

Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
For Examination Policy

cc: Draft Certificate of Correction
Adjusted PTA calculation

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,445,941 B2

DATED : November 4, 2008

Draft

INVENTOR(S) : Buechler

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1180) days

Delete the phrase "by 572 days" and insert – by 1180 days--

Day : Thursday
Date: 7/22/2010

Time: 11:51:29

PALM INTRANET

PTA Calculations for Application: 10/792258

Application Filing Date:	<u>03/02/2004</u>	PTO Delay (PTO):	<u>674</u>
Issue Date of Patent:	<u>11/04/2008</u>	Three Years:	<u>0</u>
Pre-Issue Petitions:	<u>0</u>	Applicant Delay (APPL):	<u>102</u>
Post-Issue Petitions:	<u>0</u>	Total PTA (days):	<u>1180</u>
PTO Delay Adjustment:	<u>608</u>		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
75	07/22/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	608		
71.5	10/15/2008	PTA 36 MONTHS			
71	11/04/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
70	10/02/2008	EXPORT TO FINAL DATA CAPTURE			
69	10/01/2008	DISPATCH TO FDC			
68	10/01/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
67	09/30/2008	ISSUE FEE PAYMENT VERIFIED			
66	09/30/2008	ISSUE FEE PAYMENT RECEIVED			
65	07/28/2008	FINISHED INITIAL DATA CAPTURE			
64	07/28/2008	CORRESPONDENCE ADDRESS CHANGE			
63	07/04/2008	EXPORT TO INITIAL DATA CAPTURE			
62	06/30/2008	MAIL NOTICE OF ALLOWANCE			
61	06/27/2008	ISSUE REVISION COMPLETED			
60	06/27/2008	DOCUMENT VERIFICATION			
59	06/27/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
58	06/27/2008	CASE DOCKETED TO EXAMINER IN GAU			
57	06/18/2008	NOTICE OF ALLOWABILITY			
56	06/16/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
51	04/23/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
50	04/21/2008	CORRESPONDENCE ADDRESS CHANGE			
49	04/10/2008	DATE FORWARDED TO EXAMINER			
48	03/09/2008	RESPONSE AFTER NON-FINAL ACTION		60	46

47	03/09/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
46	10/09/2007	MAIL NON-FINAL REJECTION			
45	10/01/2007	NON-FINAL REJECTION			
44	08/28/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
43	08/28/2007	REFERENCE CAPTURE ON IDS			
42	08/28/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		42	39
41	08/28/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
40	07/18/2007	DATE FORWARDED TO EXAMINER			
39	07/17/2007	RESPONSE AFTER NON-FINAL ACTION			
38	06/25/2007	MAIL NON-FINAL REJECTION			
37	06/11/2007	NON-FINAL REJECTION			
36	01/13/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
35	06/09/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
34	05/02/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
33	03/26/2007	AMENDMENT CROSSED IN MAIL			
32	05/04/2007	DATE FORWARDED TO EXAMINER			
31	04/30/2007	RESPONSE TO ELECTION / RESTRICTION FILED			
30	04/30/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
29	03/07/2007	MAIL RESTRICTION REQUIREMENT	674		-1
28	03/05/2007	REQUIREMENT FOR RESTRICTION / ELECTION			
27	01/12/2007	CASE DOCKETED TO EXAMINER IN GAU			
26	05/02/2006	REFERENCE CAPTURE ON IDS			
25.7	05/02/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
25	05/02/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	01/13/2006	REFERENCE CAPTURE ON IDS			
23.7	01/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	01/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	07/23/2004	MISCELLANEOUS INCOMING LETTER			
21	06/09/2004	REFERENCE CAPTURE ON IDS			
20.7	06/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS)			

FILED			
20	06/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED	
19	03/02/2004	PRELIMINARY AMENDMENT	
18	01/09/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE	
17	01/09/2006	CASE DOCKETED TO EXAMINER IN GAU	
16	02/11/2005	APPLICATION RETURN FROM OIPE	
15	02/11/2005	APPLICATION RETURN TO OIPE	
14	02/11/2005	APPLICATION DISPATCHED FROM OIPE	
13	02/11/2005	APPLICATION IS NOW COMPLETE	
12	07/23/2004	ADDITIONAL APPLICATION FILING FEES	
11	07/23/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC	
10	07/23/2004	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS	
9	07/23/2004	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED	
8	07/23/2004	PRELIMINARY AMENDMENT	
7	07/23/2004	WORKFLOW INCOMING AMENDMENT IFW	
6	05/25/2004	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED	
4	04/01/2004	CLEARED BY OIPE CSR	
3	04/01/2004	CASE CLASSIFIED BY OIPE	
2	03/18/2004	IFW SCAN & PACR AUTO SECURITY REVIEW	
1	03/02/2004	INITIAL EXAM TEAM NN	

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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